

REMARKS

In the May 17, 2006 Office Action, claims 1-5, 9, 10 and 12 are rejected under 35 U.S.C. § 112, second paragraph, claims 1-3, 5-9, 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,834,370 to Nelson in view of U.S. Patent No. 3,688,758 to Stephen, and claims 1-3, 5-9, 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,099,821 to Ceravolo in view of U.S. Patent No. 3,688,758 to Stephen.

By the present amendment, the specification is amended, claims 1, 6-8, 10 and 12 are amended, and claims 9 and 11 are canceled. That leaves claims 1-8, 10 and 12 pending in the application with claims 1 and 6 being independent.

The specification is amended to clarify the structure of the catches 26. Independent claim 1 is amended to recite that at least one catching device is disposed between first and second refractory members preventing the refractory members from contacting one another, and independent claim 6 is amended to recite a means for spacing disposed between first and second heat sources means preventing the first and second heat source means from contacting one another. Dependent claims 7, 8, and 10 are amended commensurate with the amendments to claim 6. Dependent claims 9 and 11 are canceled for redundancy.

The rejections under 35 U.S.C. § 103(a) are respectfully traversed because none of the prior art either alone or in combination discloses or renders obvious all of the limitations of the claimed invention. In summary, none of Nelson, Stephen or Ceravolo either alone or in combination discloses or renders obvious a barbecue device having, among other elements, a catching device disposed between refractory members (claim 1) or a means for spacing disposed between first and second heat source means (claim 6). Each rejection is addressed in detail below.

Claim Rejections - 35 U.S.C. § 112

Claims 1-5, 9, 10 and 12 stand rejected under 35 U.S.C. § 112 second paragraph as allegedly being indefinite. In particular, the Examiner indicates that the term “catch” is unclear.

In response, the specification is amended to clarify the structure of each catch 26 as being a device for catching or checking motion thereby maintaining space between the refractory members 22, as seen in Fig. 2. Attached as Exhibit A is the definition of a catch being “something that catches, especially a device for fastening or for checking motion” as found in *Webster's II New Riverside University Dictionary Copyright 1998*. In view of both the dictionary definition of a “catch” and Figure 2 of Applicants disclosure, no new matter has been added to the specification.

Additionally, independent claim 1 is amended to recite a catching device that prevents the refractory members from contacting one another. Accordingly, in view of both the amendments to the specification and independent claim 1, Applicant submits that claims 1-5 are clear and definite. With regard to dependent claim 10 and 12, claim 10 is amended to recite a means for spacing in means-plus-function format, and claim 12 is amended to recite the means for spacing is at least one catching device. Therefore, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 U.S.C. § 103

Claims 1-3, 5-9, 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,834,370 to Nelson in view of U.S. Patent No. 3,688,758 to Stephen. Also, claims 1-3, 5-9, 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of U.S. Patent No. 5,099,821 to Ceravolo. A prima facie case of obviousness has not been established with respect to the claimed invention, as amended, because all of the claim limitations are not found in the cited prior art.

Independent claim 1, as amended recites a barbecue device including, among other elements a tray supporting first and second refractory members and a catching device disposed between the refractory members preventing the refractory members from contacting one another. As amended, independent claim 6 recites a barbecue device including, among other elements, a tray supporting first and second heat source means and a means for spacing disposed between the two heat source means preventing the heat source means from contacting one another.

As acknowledged in the Office Action, neither Nelson nor Ceravolo discloses a refractory member or a heat source means for a barbecue device, as recited in the claimed invention. Additionally, neither Nelson nor Ceravolo discloses a catching device or a means for spacing disposed between refractory members or heat source means.

Stephen fails to cure the deficiencies of either Nelson or Ceravolo. Although Stephen discloses a barbecue grill having a tray with a plurality of refractory bodies 150 disposed on a grate 56, Stephen does not disclose or render obvious either a catching device or a means for spacing disposed between two of the refractory bodies, keeping the bodies from contacting one another as recited in the claimed invention. Instead, as seen in Figure 13 of Stephen, nothing is provided between the refractory bodies 150 including a catching device or even a space. Moreover, because no space is provided between the refractory bodies 150 and the fact that refractory bodies are in contact with one another, it would not have been obvious to one skilled in the art to modify the proposed combination to provide a catching device or spacing means between the refractory bodies 150 of Stephen.

The Examiner's suggestion that an opening is the same as a catch is untenable because a opening neither catches nor checks motion, nor would an opening prevent the refractory members from contacting one another, as recited in the claimed invention.

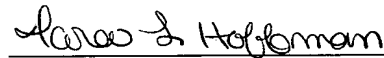
In view of the above, a prima facie case of obviousness has not been established. Therefore, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) and allowance of independent claims 1 and 6.

Dependent claims 2-5, 7, 8, 10 and 12 are also believe allowable for the same reasons as discussed above regarding independent claims 1 and 6. Moreover these claims recite additional features further distinguishing them from the prior art. Regarding dependent claim 4, Applicant again respectfully requests evidence of the Official Notice that an ashtray with a handle and adjustable leg members are well known in the art, as required by MPEP 2144.03 Part B. Regarding claim 10, the Examiner's assertion that the claim recites an optimum or workable arrangement is misplaced, because the claim specifically recites at least two spaced rows and the Examiner has pointed to no reason why two rows is either optimum or a workable arrangement.

In view of the foregoing, Applicant believes that claims 1-8, 10 and 12 are in condition for allowance. Prompt and favorable treatment is respectfully solicited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (001058-00017). Any fees due are authorized above.

Respectfully submitted,



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WEBSTER'S II

New Riverside University Dictionary

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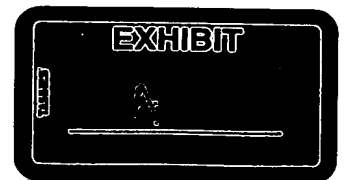


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ka-tál'pa, -tál'-) n. [Creek kutuhpa.] Tree of the genus *Catalpa*, having large leaves, and long, slender pods.
 -sis (ka-tál'-sis) n., pl. -ses (-séz) [Gk. *katalusis*, to dissolve : *kata-*, intensive + *luo*, to dissolve]

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catch-up (käch'öp, käch'-) *n.* var. of KETCHUP.
catch-up (käch'üp') *adj.* Designed or intended to catch up to

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er ô pos ô paw, for oi noise e about item edible, gallop, circ